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*Counsel for David Fose*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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In Re:

CIRCUIT CITY STORES, INC., *et al.*,<sup>1</sup>

Debtors.  
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Case No. 08-35653-KRH

Chapter 11

(Jointly Administered)

**STIPULATION AND AGREED ORDER  
RESOLVING CERTAIN DISCOVERY ISSUES**

David G. Fose (“Mr. Fose”), and Alfred H. Siegel, as Trustee (the “Trustee”), and not individually, but solely in his capacity as the Liquidating Trustee of the Circuit City Stores, Inc. Liquidating Trust (the “Trust,” and together with the “Trustee”, Mr. Fose, the “Parties”), have conferred by and through their respective counsel and, subject to the Court’s approval, HEREBY STIPULATE AND AGREE (the “Stipulation”) AS FOLLOWS:

<sup>1</sup> The Debtors in these chapter 11 cases (collectively, the “Case”), along with the last four digits of their respective federal tax identification numbers, are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbys Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512).

WHEREAS, on September 10, 2010, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law and Order Confirming Modified Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors* (the “Confirmation Order”), which, *inter alia*, confirmed the *Modified Second Amended Joint Plan of Reorganization* (the “Plan”), and established the Circuit City Stores, Inc. Liquidating Trust (the “Trust”); and

WHEREAS, the Trust maintains custody of certain of Circuit City Stores, Inc.’s (together with its affiliated companies, “Circuit City”) books and records; and

WHEREAS, a former Trust employee, Brandi Michelle Evans-Fose (“Ms. Fose”), is a named party in a divorce action adverse to Mr. Fose currently pending in the Circuit Court for the County of Hanover, Virginia, Case No. CL18-2342 (the “Hanover Action”); and

WHEREAS, Mr. Fose, through his divorce counsel, served the Trust with several Subpoenas *Duces Tecum* pertaining to, *inter alia*, Ms. Fose’s earnings, retirement plans, etc. and issued Subpoenas for Witness (Civil) to Katie Bradshaw (“Ms. Bradshaw”) and Jeff McDonald (“Mr. McDonald”), both in their capacity as Trust employees, and all pertaining to the Hanover Action (collectively, the “Hanover Subpoenas”); and

WHEREAS, on December 11, 2019, the Trust filed a *Motion of the Circuit City Stores, Inc. Liquidating Trust to Enforce Terms of Confirmed Plan, for Protection from Foreign Subpoenas, and for Order to Show Cause as to Why Stiles Ewing Powers PC, Michael S. Ewing, Esquire, Mollie C. Barton, Esquire and David G. Fose, Should Not Be Held in Contempt* (the “Contempt Motion”) [Doc. 14240]; and

WHEREAS, on December 16, 2019, the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”) entered an Order (the “Contempt Order”) voiding the Hanover Subpoenas and continuing generally the contempt relief sought in the

Contempt Motion subject to the filing of an additional notice of hearing to be held on not less than twenty-one (21) days' notice; and

WHEREAS, after entry of the Contempt Order, Mr. Fose inquired as to whether the Trustee on behalf of the Trust would agree to allow limited participation of Ms. Bradshaw and Mr. McDonald in the Hanover Action.

WHEREAS, in an attempt to address the involvement of Trust personnel in the underlying evidentiary issues in the Hanover Action, the Parties have entered into this Stipulation and Agreed Order.

NOW THEREFORE, the Parties hereby stipulate and agree as follows, by and through their respective counsel of record, and it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Ms. Bradshaw's Deposition. Mr. Fose will take a *de bene esse* deposition of Ms. Bradshaw prior to the Hanover Action trial, currently scheduled for April 6-7, 2020, on a date convenient to the Parties, Ms. Bradshaw and Ms. Fose. The scope of the deposition questioning and testimony shall be agreed upon in advance by Mr. Fose and the Trust and, if no said agreement can be reached, same shall be submitted to this Court for determination. Ms. Bradshaw will not appear at the Hanover Action trial.

2. Mr. McDonald's Trial Testimony. Mr. McDonald will appear at the Hanover Action trial without the need or issuance of a subpoena. The scope of the trial questioning and testimony relating to the Trust shall be agreed upon in advance by Mr. Fose and the Trust and, if no said agreement can be reached, same shall be submitted to the Bankruptcy Court for determination. The scope of the trial questioning and testimony not relating to the Trust shall be agreed upon in advance by Mr. Fose and Mr. McDonald's personal counsel. Mr. Fose and Ms.

Fose will coordinate and provide Mr. McDonald with a four-hour window in which he should be at the Hanover Circuit Court for trial at least five days prior to the start of trial, and Mr. McDonald shall not be required to be present for the entire trial.

3. No Other Deposition/Trial Testimony. Other than the deposition testimony of Ms. Bradshaw and trial the testimony of Mr. McDonald, as set forth above, no other Trust representative shall appear and/or testify in the Hanover Action without further Order of this Court.

4. Reservation of Rights and Jurisdiction. The Trust reserves all rights and claims against Mr. Fose and his divorce counsel pertaining to the issuance of the Hanover Subpoenas, the Contempt Motion, and the Contempt Order. Mr. Fose and his divorce counsel submit to the jurisdiction of the Bankruptcy Court as to the interpretation and enforcement of this Stipulation and Agreed Oder, the Contempt Motion, and the Contempt Order, and, pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), agrees that the Bankruptcy Court shall retain jurisdiction thereto.

5. Immediate Effect. This Stipulation and Agreed Order shall be immediately enforceable and effective and any applicable stay is hereby waived.

Dated: Feb 27 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
Kevin R. Huennekens, United States  
Bankruptcy Judge

Entered on Docket: Feb 28 2020

IT IS SO STIPULATED:

DAVID FOSE

CIRCUIT CITY STORES, INC.  
LIQUIDATING TRUST

/s/ Robert S. Westermann  
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*Counsel to Circuit City Stores, Inc.  
Liquidating Trust*

**CERTIFICATE OF ENDORSEMENT**

I hereby certify, under Local Rule 9022-1, that the foregoing proposed Order has been  
endorsed and/or served upon all necessary parties.

/s/ Robert S. Westermann  
Counsel